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September 24, 2010

Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street
Montpelier, VT 05620-2701

Re: Department of Public Service Reply Comments regarding September 3 filing of
"Process and Administration for an Order of Appointment" and "Order of
Appointment for VEIC".

Dear Ms. Hudson:

On September 3, 2010, the Department of Public Service ("Department") filed with the Public Service Board ("Board") final drafts of the above referenced documents. On September 17, IBM and Burlington Electric Department ("BED") filed comments regarding certain provisions of the "Process and Administration of an Order of Appointment" (herein, "the P&A"). The Department offers the following comments in reply.

BED's sole comment referred to Section II.1.D.(c), suggesting a minimum process associated with this provision. The Department has no objection to BED's suggestion.

IBM made three comments.

- 1) "Page 16. IBM suggests that a paragraph (k) be included requiring that should the Appointment be terminated the current [Energy Efficiency Utility ("EEU")] entity will reassign existing contracts to one of the following as determined by the Public Service Board: the new EEU as appointed by the Board, the Department of Public Service or the Public Service Board."

The Department understands this comment to refer to Section III.5, "Revocation or Termination of Appointment". The Department suggests that the concern IBM raises is addressed by Section III.5. (h), which states that:



Upon termination of Appointment, an EEU will likely have outstanding commitments, including, but not limited to loans, loan guarantees, partnership agreements and committed capacity in the FCM. An EEU shall be relieved of those obligations from the date of termination forward, but shall remain responsible for (a) all payments due up to the time of termination, and (b) all liabilities arising from any disputes arising from such contracts up to the time of termination. *The responsibility for these obligations from the date of termination forward will be assigned by the Board after such process as the Board may require* (emphasis added).

The Department asserts that it is neither necessary nor prudent to choose at this time who should be assigned obligations of an EEU if an Appointment be terminated. Responsibilities could be assigned to any one or a number of different parties, including any of the entities listed by IBM, utilities, or another unknown entity. The language included in the current draft provides flexibility for the Board to determine at the appropriate time to which entity (entities) existing commitments should be assigned. The Department reads the above language to include existing contracts within the scope of commitments, but would support adding "existing contracts" to the language in Section III.5.(h) to ensure clarity.

- 2) "Page 17.1.D. :IBM recommends that this section be modified to read as follows: "At the end of a 3-year performance period any uncommitted EEC funds shall be used as a budget credit to ratepayers for efficiency services in the following year"."

This comment refers to Section IV.1.D. "Compensation and Payment", "General", which outlines a process for using uncommitted funds at the end of a 3-year performance period. The language in the P&A is consistent with current language in the Board Rule 5.305(E)1.a, which states:

For the year 2007, and any subsequent year following the expiration of a contract between the Board and an entity serving as the EEU:

*If Uncommitted Funds < 0.05 * Prior Year Total Budget*, then Budget Credit shall be determined by the Board in a separate process

*If Uncommitted Funds > 0.05 * Prior Year Total Budget*, then Budget Credit = *Uncommitted Funds*

This process allows the Board flexibility if the amount of uncommitted funds at the end of a performance period is less than 5% of the prior years' budget. The Department believes that this flexibility is valuable to ratepayers. This value is evidenced, in one example, by the use of 2008 carryover funds to leverage matching funds to implement smart-grid activities".¹ Thus, the Department recommends against the proposed IBM language.

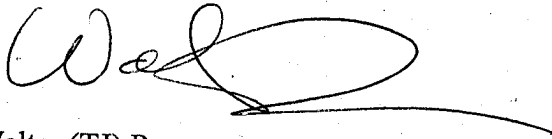
¹ Public Service Board "Board Determination RE 2008 Unspent EEU Funds", July 28,2009

- 3) Page 34. Appendix B: A time frame is established for Annual Reports (by June 15) however no schedule is specified for either Monthly Reports or Quarterly Reports. IBM suggests 30 days for Monthly Reports and 45 days for Quarterly reports.

The Department has no objections to adding specific dates for monthly and quarterly reports. The Department suggests that these dates should be based on current practice. Including a strict reporting date for the annual report is problematic because the annual report often depends on a number of other factors, including the Department's annual verification of savings claims and a Board determination based upon that process. The Department suggests that if language is added, it be flexible enough to accommodate some timing uncertainty.

Thank you for the opportunity to comment,

Sincerely,

A handwritten signature in black ink, appearing to read 'Walter', followed by a large, stylized loop and a horizontal line extending to the right.

Walter (TJ) Poor
Energy Program Specialist
Department of Public Service
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